

## **REMARKS**

In response to the Office Action dated December 24, 2008, the Assignee respectfully requests reconsideration based on the above amendments and on the following remarks.

Claims 1-28 and 31-37 are pending in this application. Claims 29-30 and 38-50 were previously canceled without prejudice or disclaimer.

### **Amendments to the Specification**

This response inserts new paragraphs [0074A] through [0074W]. Support for these paragraphs may be found in U.S. Application 09/496,825 to Grauch, *et al.*, which is incorporated by reference.

### **Objection to Claim 1**

The Office objected to claim 1 for antecedent basis. Claim 1 has been amended, so the Office is respectfully requested to re-examine claim 1 in its current presentation.

### **Rejection under § 112**

The Office rejected claims 1-28 and 31-37 under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement. The Office, in particular, asserts that some claimed features are not supported by the application. The independent claims have been amended, so the Office is respectfully requested to re-examine the independent claims in their current presentation.

### **Rejection of Claim 36 under § 101**

Claim 36 was rejected under 35 U.S.C. § 101 for allegedly claiming non-statutory subject matter. Claim 36 has been amended, so the Office is respectfully requested to re-examine claim 36 in its current presentation.

**Rejection of Claims under § 103 (a)**

The Office rejects claims 1-8, 10-22, 24-28, and 31-36 under 35 U.S.C. § 103 (a) as being obvious over Published U.S. Patent Application 2003/0172374 to Vinson, *et al.* in view of WO 98/31114 to Grauch, *et al.*

These claims, however, are not obvious over the combined teaching of *Vinson* with *Grauch*. These claims recite, or incorporate, features that are not taught or suggested by *Vinson* with *Grauch*. Independent claim 1, for example, recites “calculating a probability that the at least one subscriber will continue to view content that follows at least one of a category of content and a genre of content.” Support may be found at least at paragraph [0028] of the as-filed application. Independent claims 15 and 36 recite similar features.

*Vinson* with *Grauch* do not obviate all these features. *Vinson* describes a database that stores set-top box events. See Published U.S. Patent Application 2003/0172374 to Vinson at paragraph [0027]. Each set-top box’s viewing habits may be correlated to demographic data, news, weather, and sales. See *id.* at paragraphs [0032] and [0033]. A “Data Center” may store the collected data. See *id.* at paragraph [0087]. Users may query the data center and extract “meaningful” information. See *id.* at paragraph [0088]. *Grauch* collects events and generates timelines. See U.S. Application 09/496,825 at column 2, lines 40-60. Even so, the combined teaching of *Vinson* with *Grauch* fails to teach or suggest obviate “calculating a probability that the at least one subscriber will continue to view content that follows at least one of a category of content and a genre of content,” as the independent claims recite. One of ordinary skill in the art, then, would not think that independent claims 1, 15, and 36 are obvious.

Independent claims 15 and 36 recite even more distinguishing features. These claims, for example, recite “*calculating another probability that the at least one subscriber will terminate an advertisement based on a consistency of the genre of content presented in a multiple program sequence over a specified time interval at least one of preceding and subsequent to the advertisement.*” Support may be found at least at paragraph [0031] of the as-filed application. Because both *Vinson* and *Grauch* are silent to these additional features, one of ordinary skill in the art would not think that independent claims 15 and 36 are obvious.

Claims 1-8, 10-22, 24-28, and 31-36, then, are not obvious over *Vinson* with *Grauch*. Independent claims 1, 15, and 36 recite many features that are not taught or suggested by *Vinson* with *Grauch*. The dependent claims incorporate these same features and recite additional features. Claims 1-8, 10-22, 24-28, and 31-36, then, are not obvious, so the Office is respectfully requested to remove the § 103 (a) rejection of these claims.

**Rejection of Claims 9, 23 & 37 under § 103 (a)**

The Office also rejected claims 9, 23, and 37 under 35 U.S.C. § 103 (a) as being obvious over *Vinson* with *Grauch* in view of Published U.S. Patent Application 2002/0123928 to Eldering, *et al.*

Claims 9, 23, and 37, though, cannot be obvious over *Vinson*, *Grauch*, and *Eldering*. These claims depend, respectively, from independent claims 1, 15, and 36 and, thus, incorporate the same distinguishing features. As the above paragraphs explained, both *Vinson* and *Grauch* fail to teach or suggest all the features of independent claims 1, 15, and 36, and *Eldering* does not cure these deficiencies. The Office asserts that *Eldering* discloses storing profile data as XML files. Whether or not this assertion is true, the proposed combination of *Vinson*, *Grauch*, and *Eldering* still fails to teach or suggest all the features of independent claims 1, 15, and 36, from which claims 9, 23, and 37 depend. One of ordinary skill in the art, then, would not think that claims 9, 23, and 37 are obvious. The Office is respectfully requested to remove the § 103 (a) rejection of these claims.

If any questions arise, the Office is requested to contact the undersigned at (919) 469-2629 or [scott@scottzimmerman.com](mailto:scott@scottzimmerman.com).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott P. Zimmerman", with a stylized flourish at the end.

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